No. 19,438

IN THE

United States Court of Appeals

For the Ninth Circuit

SOUTHERN PACIFIC COMPANY, a corporation, et al.,

Appellants,

vs.

SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO, a voluntary association, et al.,

Appellees.

On Appeal from the United States District Court
for the Northern District of California,
Southern Division

BRIEF ON REHEARING OF APPELLANT BROTHERHOOD OF RAILROAD TRAINMEN

HILDEBRAND & MCLEOD,
CLIFTON HILDEBRAND,
1212 Broadway,
Oakland, California 94612,
Attorneys for Appellant
Brotherhood of Railroad Trainmen,
General Committee, BRT
and J. J. Corcoran.

ERNAU-WALSH PRINTING CO., SAN FRANCISCO

Subject Index

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INTRODUCTION

This brief on rehearing of the appellant Brotherhood of Railroad Trainmen is submitted pursuant to the Court's Order Granting Rehearing. Said Order suggests the possibility that the Court may have been in error in construing existing collective bargaining agreements as establishing craft lines along geographical lines. At the outset, the Brotherhood of

Railroad Trainmen wishes to state its belief that the Court correctly construed said agreements in this regard. The establishment of craft lines on a geographical basis has been accepted by all parties to this litigation from its beginning. The collective bargaining agreements of all of the Bargaining Agents party to this litigation contain provisions spelling out the geographical boundaries of the craft lines. It would be error for the Court in this instance to attempt another method of craft delineation in the light of existing practices and existing collective bargaining agreements.

I. CRAFT LINES BETWEEN ROADMEN AND YARDMEN ARE ESTABLISHED BY PRECISE GEOGRAPHICAL LIMITS.

The SUNA Agreement, Article 23, Section (b) provides in part:

> "Location of yard limit boards as of October 1, 1934 establishes switching limits in all yards, ..."

The SUNA Agreement, Article 31, Section (a) provides:

> "Switchmen shall have the right to man all work train service operated exclusively within the recognized confines of yard limits."

The Trainmen's Agreement, Article 44, Section (e) also reads in part:

> "Location of yard limit boards as of October 1, 1934 establishes switching limits in all yards, ..."

The performance of yard service does not result in accumulation of rights for road service. Article 23, Section (a) of the SUNA Agreement reads in part:

> "Yard employes will have no rights in train service and vice versa, but if temporarily employed, they will not lose their rights within sixty (60) days."

The Trainmen's Agreement contains a provision to the same effect in Article 47, Section (a).

These provisions mean in effect that should a roadman desire to make application for yard work such roadman acquires no rights to perform such yard work by reason of prior performance of road work and that his application to perform such work is on the same basis as a newly hired employee; i.e., a person without any seniority. Further, the continued performance of yard work by a roadman, when road work is available, will result in the loss of the roadman's accumulated rights to road work. The roadman does begin to accumulate yard seniority as of the first day of compensated service in yard work. Organizational affiliation is not a factor in the acquisition of such work. An employee whose past employment has been in the area of road work and is a member of the Brotherhood of Railroad Trainmen cannot be assigned by the railroad to switching duties in a closed yard or secure such employment since the roadman has no rights to secure such employment. See SUNA's Agreement, Article 23, Section (a) and the Brotherhood of Railroad Trainmen's Agreement, Article 47, Section (a).

Conversely a member of SUNA could not secure performance of switching work at the City of Industry or be assigned to such duties for the reasons given.

A union cannot bargain with the carrier for the right of its members to perform work which is within the representational jurisdiction of another craft. The organizational representatives for the work at the City of Industry are, as stated in the Court's opinion, the road service representatives.

II. ARTICLE 10(b) OF THE SUNA-SOUTHERN PACIFIC AGREEMENT IS INAPPLICABLE TO THE PRESENT DISPUTE.

Article 10(b) does not allow Southern Pacific Company to extend the switching limits by designating the City of Industry as a closed yard because:

1. By its own terms such procedure is to be initiated only by the carrier.

2. Article 10(b) applies only to changing existing switching limits and not to the establishment of an entirely new closed yard.

3. Yard crews are not now and never have been employed at the City of Industry. Neither is that location within the limits of any closed yard; it is in fact located in road territory and has always been served by road crews.

4. Article 10(d) provides in explicit language: "This agreement shall in no way effect the changing of yard or switching limits at points where no yard crews are employed".

SUMMARY

The purported Section 6 notice of SUNA upon Southern Pacific Company constituted an attempt to raid the established jurisdiction of another union and does not give rise to a bargainable dispute. The opinion of the Court dated July 20, 1965 recognized this and should remain unchanged.

HILDEBRAND & MCLEOD,
By CLIFTON HILDEBRAND,
Attorneys for Appellants
Brotherhood of Railroad Trainmen,
General Committee, BRT and
J. J. Corcoran.

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

CLIFTON HILDEBRAND.